

COUNCIL AGENDA: 06-28-05  
ITEM: 3.9

## Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Lee Price, City Clerk

**SUBJECT:** SB 435 (HOLLINGSWORTH),  
REGARDING DENSITY BONUS  
LAW

**DATE:** 06-28-05

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### RECOMMENDATION

As recommended by the Rules Committee on June 22, 2005, oppose SB 435 (Hollingsworth) regarding density bonus law changes.

### BACKGROUND

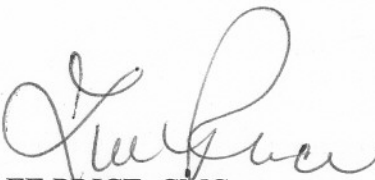
See the attached Rules Committee report for more information.

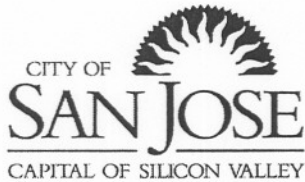
### PUBLIC OUTREACH

This matter was on the Rules Committee Agenda on June 22nd. The meeting was open to the public.

### COORDINATION

This item was coordinated with the Administration.

  
LEE PRICE, CMC  
City Clerk



# Memorandum

**TO:** RULES COMMITTEE

**FROM:** Betsy Shotwell

**SUBJECT:** SEE BELOW

**DATE:** June 15, 2005

Approved

*Deanna J. Ahn*

Date

*6-16-05*

**SUBJECT: SB 435 (HOLLINGSWORTH), REGARDING DENSITY BONUS LAW**

## RECOMMENDATION

That the Rules Committee recommend to the Council an oppose position for SB 435 (Hollingsworth) regarding density bonus law changes. Staff is requesting that this item be agendized for the June 28, 2005 City Council meeting.

## BACKGROUND

The State of California enacted significant changes to the state's density bonus law, which went into effect January 1, 2005. The legislation, SB 1818, introduced by Senator Hollingsworth, requires cities to provide a density bonus to developers above local General Plan land use designations and Zoning requirements in exchange for the provision of a specified percentage of affordable housing. Cities are also required to provide at least one to three incentives to developers of affordable housing, depending on the percentage of affordable units provided. The law defines incentives as reductions in site or development standards, approval of mixed-use zoning, or other regulatory incentives, if the incentives result in financially sufficient cost reductions to a proposed project. The law also allows the developer to request an unlimited number of waivers from required development standards, provided that the developer can show those waivers are financially necessary.

## ANALYSIS

As currently amended, SB 435 would allow the developer to receive an additional development incentive if the developer elects to use 50% or less of the density bonus granted to them under the density bonus law. The bill also deletes language that requires developers to show that waivers from development standards are necessary to make the development of affordable housing units economically feasible. These proposed changes come approximately six months after the effective date of SB 1818.

Staff recommends opposing SB 435. SB 435 proposes to amend SB 1818, which has only been in effect since the first of the year. This is too little time to analyze how the existing law either spurs or unintentionally hinders the production of affordable housing, and is too little time to make logical revisions that help to further the goals of the recently enacted law.

Secondly, the allowance for an additional development incentive in exchange for not taking advantage of the full density bonus departs from the concept of offering density bonuses as an incentive to produce affordable housing. The density bonus incentive has the additional benefit of increasing the housing supply generally. On the other hand, the proposed change to allow an additional development incentive would further undermine the concepts of zoning and local control without helping to increase the housing supply. This would likely result in development proposals that are not compatible with surrounding neighborhoods.

The bill also proposes to delete language that requires developers to show that waivers from development standards are necessary to make the development of affordable units economically feasible. This change allows the developer to make requests for an unlimited number of variances from a city's development standards without providing justification. If the city wishes to deny these waivers, this change puts the burden on the city to make written findings that either the waivers are not required to provide for affordable housing costs or that the waivers would have specific adverse impacts. This change subverts the idea that the city is providing variances from development standards in order to make the provision of affordable housing more economically feasible, and turns the idea upside down: that is, development standards are assumed to damage the feasibility of affordable housing projects unless the City finds otherwise.

### **RECOMMENDED CITY POSITION**

As indicated in the Analysis section, the bill comes very shortly after the effective date of the last year's revisions to the density bonus law. The proposed bill includes provisions that would not help increase the housing supply, that would limit the ability of the City to impose zoning controls on developments with an affordable component, and that would put the burden on the City to demonstrate why waivers from development standards are not necessary to the viability of a project. It is for these reasons that staff recommends that San Jose oppose SB 435.

### **STATUS**

To be heard in Assembly Housing Committee.

RULES COMMITTEE

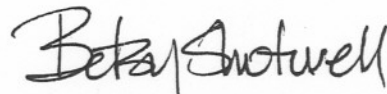
06-22-05

**Subject:** SB 435 (Hollingsworth) regarding density bonus law changes.

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**COORDINATION**

This memorandum has been coordinated with the Department of Housing, Department of Planning, Building and Code Enforcement, the City's Legislative Representative in Sacramento and the City Attorney's Office.

A handwritten signature in black ink, reading "Betsy Shotwell". The signature is written in a cursive, flowing style.

BETSY SHOTWELL

Director, Intergovernmental Relations